

## § 724.111

are found in the Naval Military Personnel Manual and Marine Corps Separation and Retirement Manual as well as predecessor publications.

### § 724.111 Punitive discharge.

A discharge awarded by sentence of a court-martial. There are two types of punitive discharges:

(a) *Bad conduct*. A separation from the naval service under conditions other than honorable. It may be effected only as a result of the approved sentence of a general or special court-martial.

(b) *Dishonorable*. A separation from the naval service under dishonorable conditions. It may be effected only as a result of the approved sentence of a general court-martial.

### § 724.112 Clemency discharge.

(a) The clemency discharge was created by the President on September 16, 1974, in his Proclamation 4313, "Announcing a Program for the Return of Vietnam Era Draft Evaders and Military Deserters." Upon issuance to individuals who have an undesirable discharge or a punitive discharge, a clemency discharge serves as a written testimonial to the fact that the individual has satisfied the requirements of the President's program, and has fully earned his/her return to the mainstream of American society in accordance with that program.

(b) The clemency discharge is a neutral discharge, neither honorable nor less than honorable. It does not effect a change in the characterization of the individual's military service as having been under other than honorable condition, nor does it serve to change, seal, erase or in any way modify the individual's past military record. Therefore, if the underlying discharge was issued as a result of a general court-martial, the issuance of a Clemency Discharge does not subject the underlying characterization to review under 10 U.S.C. 1553. Clemency discharges are issued by the Commander, Naval Military Personnel Command or the Commandant of the Marine Corps when an individual has met the requirements of the Presidential Proclamation.

## 32 CFR Ch. VI (7-1-08 Edition)

### § 724.113 Application.

In the context of this Manual, a written application to the NDRB for the review of a discharge submitted by a former member of the naval service or, where a former member is deceased or incompetent, by spouse, next of kin or legal representative. Department of Defense Form 293 must be used for the application.

### § 724.114 Applicant.

A former member of the naval service who has been discharged administratively in accordance with the directives of the naval service or by sentence of a special court-martial under title 10 U.S.C. 801 *et seq.* (Uniform Code of Military Justice) and, in accordance with statutory and regulatory provisions:

(a) Whose case is considered by the NDRB at the request of the former member, or, if authorized under § 724.113, the surviving spouse, next-of-kin or legal representative, or

(b) Whose case is considered on the NDRB's own motion.

### § 724.115 Next of kin.

The person or persons in the highest category of priority as determined by the following list (categories appear in descending order of priority): Surviving legal spouse; children (whether by current or prior marriage) age 18 years or older in descending precedence by age; father or mother, unless by court order custody has been vested in another (adoptive parent takes precedence over natural parent); siblings (whole or half) age 18 years or older in descending precedence by age; grandfather or grandmother; any other relative (precedence to be determined in accordance with the civil law of descent of the deceased former member's state of domicile at time of death).

### § 724.116 Council/representative.

An individual or agency designated by the applicant who agrees to represent the applicant in a case before the NDRB. It includes, but is not limited to: a lawyer who is a member of the bar of a Federal Court or of the highest court of a State; an accredited

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representative designated by an organization recognized by the Administrator of Veterans Affairs; a representative from a State agency concerned with veterans affairs; or a representative from private organizations or local Government agencies.

### § 724.117 Discharge review.

A nonadversary administrative reappraisal at the level of the Navy Department of discharges from the naval service. The object of the reappraisal is to determine whether the discharge should be changed, and if so, the nature of the change. This reappraisal includes the type and reason/basis for separation, the procedures followed in accomplishing separation, and the characterization of service. This term includes determinations made under the provisions of 38 U.S.C. 3103(2).

### § 724.118 Documentary discharge review.

A formal session of the NDRB convened for the purpose of reviewing, on the basis of documentary data, an applicant's discharge. The Documentary data shall include the application together with all information accompanying that application, available service and medical records, and any other information considered relevant by the NDRB.

### § 724.119 Personal appearance discharge review.

A formal session of the NDRB convened for the purpose of reviewing an applicant's discharge on the basis of a personal appearance, as well as documentary data. The personal appearance may be by the applicant or by a representative of the applicant, or both.

### § 724.120 National Capital Region (NCR).

The District of Columbia; Prince Georges and Montgomery Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities and towns included within the outer boundaries of the foregoing counties.

### § 724.121 Decisional document.

The written recordation of the applicant's summary of service, the issue or

issues presented together with any evidence offered in support of the application, the NDRB's response to the issue or issues, the votes of the members of the panel, and any recommendations or responses by the President of the NDRB or the Secretarial Reviewing Authority (SRA). The decisional document is promulgated by the "en bloc letter".

### § 724.122 Recorder, NDRB Panel.

A panel member responsible for briefing an applicant's case from the documentary evidence available prior to a discharge review, presenting the brief to the panel considering the application, performing other designated functions during personal appearance discharge hearings, and drafting the decisional document subsequent to the hearing.

### § 724.123 Complainant.

A former member of the Armed Forces (or the former member's counsel) who submits a complaint under 32 CFR Part 70 with respect to the decisional document issued in the former member's own case; or a former member of the Armed Forces (or the former member's counsel) who submits a complaint under reference (b) stating that correction of the decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue.

## Subpart B—Authority/Policy for Departmental Discharge Review

### § 724.201 Authority.

The Naval Discharge Review Board, established pursuant to 10 U.S.C. 1553, is a component of the Naval Council of Personnel Boards. By SECNAVINST 5730.7 series, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) is authorized and directed to act for the Secretary of the Navy within his/her assigned area of responsibility and exercises oversight over the Naval Council of Personnel Boards. SECNAVINST 5420.135 series of July 15, 1983 states the organization, mission, duties and responsibilities of the Naval Council of Personnel Boards to include